

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELAINE ANDREWS, et al.,

No. C 11-3930 CW

Plaintiffs,

ORDER AWARDING
PLAINTIFFS'
ATTORNEYS' FEES
(Docket No. 15)

v.

LAWRENCE LIVERMORE NATIONAL
SECURITY, LLC, et al.,

Defendants.

Previously the Court granted Plaintiffs' motion to remand and their request for costs and attorneys' fees pursuant to 28 U.S.C. § 1447(c). Docket No. 33. However, the Court deferred ruling on the amount of costs and fees awarded, pending the submission of further briefing and documentation. Having considered all of the parties' submissions, the Court awards Plaintiffs \$39,624 in fees.

DISCUSSION

Title 28 U.S.C. § 1447(c) provides that, on granting a motion to remand, the court may order the defendant to pay the plaintiff its "just costs and any actual expenses, including attorney fees, incurred as a result of the removal." In this circuit, courts calculate an award of attorneys' fees using the lodestar method, whereby the court multiplies "the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 978 (9th Cir. 2008). The party seeking an award of attorneys' fees bears

1 the burden of producing "satisfactory evidence--in addition to the
2 attorney's own affidavits--that the requested rates are in line
3 with those prevailing in the community for similar services by
4 lawyers of reasonably comparable skill, experience and
5 reputation." Id. at 980. Attorneys' fees must be awarded "in
6 line with the prevailing market rate of the relevant community."
7 Carson v. Billings Police Dep't., 470 F.3d 889, 891 (9th Cir.
8 2006). Generally, "the relevant community is the forum in which
9 the district court sits." Camacho, 523 F.3d at 979.

11 Reasonable hours expended on a case are hours that are not
12 "'excessive, redundant, or otherwise unnecessary.'" McCown v.
13 City of Fontana, 565 F.3d 1097, 1102 (9th Cir. 2009) (quoting
14 Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)). Although the
15 lodestar amount is presumptively reasonable, courts may adjust the
16 lodestar amount considering the time and labor required, the
17 novelty and difficulty of the questions involved, the skill
18 requisite to perform the legal service properly, whether the fee
19 is fixed or contingent, the amount involved, the results obtained,
20 counsel's experience, reputation, and ability, and awards in
21 similar cases. See Ballen v. City of Redmond, 466 F.3d 736, 746
22 (9th Cir. 2006) (internal citations and quotations omitted).

24 In their initial request for fees and costs, Plaintiffs
25 sought \$52,207.50. The Court found lacking Plaintiffs'
26 documentation in support of the hourly rate for two of their
27 attorneys. It also appeared that the number of hours of service
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1 indicated in the request was excessive in light of Plaintiffs'
2 fifteen page motion to remand and fourteen page reply brief. The
3 Court ordered Plaintiffs to submit supplemental briefing,
4 contemporaneous billing records and an explanation of the number
5 of hours of service required to complete their motion to remand.

6 In their supplemental briefing, Plaintiffs request
7 \$76,419.00 in attorneys' fees and costs. To support their amended
8 request, Plaintiffs submitted declarations by the three attorneys
9 assigned to the motion--J. Gary Gwilliam, a senior, founding
10 partner at Gwilliam, Ivory, Chiosso, Cavalli & Brewer, P.C., the
11 firm representing Plaintiffs, Robert E. Strauss, also a partner in
12 the firm, and Robert J. Schwartz, a contract attorney, whose
13 services were utilized by the firm.

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15 A. Reasonable Rates

16 The hourly rates requested by Plaintiffs for their attorneys
17 are reasonable.

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19 Gwilliam, who has practiced civil litigation for over thirty
20 years, requests an hourly rate of \$750. This rate for Gwilliam
21 has been approved in prior litigation and is consistent with the
22 prevailing market rate in this district for similarly experienced
23 and skilled attorneys. See, e.g., Canal v. Dann, 2011 WL 3903166,
24 *2-4 (N.D. Cal.) (approving a \$700 hourly rate for a similarly
25 experienced attorney, and noting evidence of a \$785 hourly rate
26 charged by a senior partner at a plaintiffs' firm who has earned
27 numerous accolades and has practiced law since 1983).
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1 Strauss, who has over seventeen years of experience
2 representing plaintiffs and handling employment related matters,
3 seeks an hourly rate of \$585. He has obtained favorable
4 resolutions on behalf of numerous plaintiffs. In 2009, in a
5 different case, Strauss was awarded fees at a rate of \$525, which
6 was not contested by the defendants, who were then represented by
7 the same firm presently representing Defendants in this action.
8 Strauss' rate appears reasonable based on the rate billed by an
9 associate, with seven years less experience than Strauss, who
10 works at the firm representing Defendants, and based on the rate
11 approved for similarly experienced and skilled attorneys in other
12 litigation pursued in this district. See id.

14 Schwartz requests an hourly rate of \$300. Schwartz was
15 admitted to the California Bar in 2007. He has worked as a
16 contract attorney with the firm of record in this action since
17 September 2009. During that time, he has worked almost
18 exclusively on the present case at all phases of the litigation.
19 Schwartz has extensive knowledge of the voluminous documents in
20 this case, has meet with Plaintiffs on numerous occasions and has
21 participated in several depositions. Schwartz has also
22 participated in a state court trial.

24 Defendants argue that a reasonable rate for Schwartz is \$75
25 to \$150 per hour. The contract rates submitted in connection with
26 Katina B. Miner's declaration, however, provide no indication that
27 such rates would be charged by an attorney with experience and
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1 skills similar to Schwartz's. The gist of Defendants' objection
2 is that Schwartz is a contract attorney. However, Defendants
3 provide no authority for the proposition that, for purposes of
4 determining reasonable hourly rates, an attorney's status as a
5 contract attorney, as opposed to his or her employment as an
6 associate, is a proper substitute for evaluating an attorney's
7 actual experience or skills.

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9 Plaintiffs have submitted evidence that a managing associate
10 at the firm retained by Defendants, with employment law
11 experience, who graduated in 2006, billed at an hourly rate of
12 \$480 in 2010 and 2011. Likewise, an associate with the same firm,
13 who also specialized in employment litigation, graduated in 2009
14 and clerked prior to beginning practice with the firm, billed an
15 hourly rate of \$380 in 2011. By comparison, Schwartz's rate of
16 \$300 appears reasonable.

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18 B. Reasonable Hours

19 The amount of hours sought by Gwilliam and Strauss are
20 excessive. Gwilliam's declaration indicates that he worked
21 thirty-three hours on the motion to remand between August 10, 2011
22 and August 26, 2011. He worked an additional eight hours to
23 prepare Plaintiffs' supplemental three page brief, to review three
24 drafts of his eight page declaration, as well as Strauss' and
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1 Schwartz's declarations.¹ Strauss requests fees for fifty-two
2 hours of work incurred as a result of the motion to remand.
3 Finally, Schwartz requests fees for 58.33 hours of service.

4 The hours of work reported indicate substantial duplication
5 of efforts by the three attorneys and a disregard for the
6 reasonable delegation of work to attorneys based on their
7 experience. For example, on August 12, 2011 all three attorneys
8 billed substantial hours to research legal authorities relevant to
9 Defendants' notice of removal. Schwartz billed eight hours,
10 Strauss billed 4.5 hours and Gwilliam billed 2.5 hours. However,
11 the legal authorities at issue in Plaintiffs' opening brief were
12 limited. Given Gwilliam's and Strauss' substantial litigation
13 experience and the research time they billed on August 11, 2011,
14 the motion should not have required significant time on their part
15 on August 12, 2011.
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17 The records for August 25 and 26, 2011 are also illustrative.
18 On these days, Plaintiffs' counsel indicate that they worked on
19 their reply in support of their motion for remand. During that
20 time, Gwilliam billed 13.5 hours, Strauss billed 16 hours and
21 Schwartz billed 20.58 hours in connection with preparing the
22 reply.
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26 ¹ There is an error in Gwilliam's declaration. He attests
27 that he provided a total of thirty-eight hours of service,
28 although his records for time spent on the supplemental briefing
indicate an additional three hours of service.

1 The motion to remand required substantial work, given the
2 posture of the case, the parties' arguments about the grounds for
3 removal and the need for an examination of the parties'
4 communications and disclosures. The motion required consideration
5 of whether Plaintiffs were asserting new claims in state court
6 that fell within federal jurisdiction, such that grounds existed
7 under the parties' stipulation to remove the case for a second
8 time. Significant supporting documents were required to provide
9 evidence of the parties' filings, communications and disclosures.
10 In light of the posture of the case--a pending motion for summary
11 adjudication and an imminent trial date--counsel for Plaintiffs
12 would have been relatively familiar with key legal and factual
13 issues in the case, but locating and gathering the necessary
14 information to respond vigorously would have required substantial
15 time.
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18 Nevertheless, Plaintiffs do not explain specifically why
19 50.08 hours of attorney time was reasonable to prepare their
20 fourteen page reply. Although there is no indication that the
21 motion entailed the inclusion of boilerplate language, the legal
22 issues presented were straight-forward. The extremely large
23 request for fees suggests an attempt by Plaintiffs to punish
24 Defendants for their objectively unreasonable decision to remove
25 the case, when Defendants had already agreed to remand the action
26 once before and actively litigated the case in state court.
27 Indeed, at the time Defendants removed the case to this Court, as
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1 noted earlier, a motion for summary adjudication was pending in
2 state court and the parties were preparing for a fast-approaching
3 trial date.

4 Although Schwartz's request for 58.33 hours appears within a
5 range of reasonableness, Plaintiffs' supporting declarations are
6 inadequate to justify the additional hours requested for the
7 partners, Gwilliam and Strauss. To better reflect the time
8 necessary to reasonably supervise Schwartz's efforts and prepare
9 the briefing, Gwilliam's time is reduced to ten hours and Strauss'
10 time is reduced to twenty-five hours.

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12 C. Costs

13 Neither Plaintiffs' original briefing on their request for
14 attorneys' fees, nor their supplemental briefing, point to
15 evidence of the costs incurred as a result of their motion to
16 remand.

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CONCLUSION

Plaintiffs' request for attorneys' fees in connection with its motion to remand is granted in the amount of \$39,624. This award amounts to 58.33 hours for Schwartz's service at the rate of \$300 per hour, ten hours for Gwilliam's service at the rate of \$750 per hour and twenty-five hours for Strauss' service at the rate of \$585 per hour.

IT IS SO ORDERED.

Dated: 1/18/2012


CLAUDIA WILKEN
United States District Judge